



California Fair Political Practices Commission

May 12, 1989

Valerie J. Armento
City Attorney
P.O. Box 711
South San Francisco, CA 94083

Re: Letter No. 89-285

Dear Ms. Armento:

Your letter requesting advice under the Political Reform Act was received on May 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh

June 7, 1989

Valerie J. Armento
City Attorney
City Hall Annex
315 Maple Avenue
P. O. Box 711
South San Francisco, CA 94083

Re: Your Request for Advice
Our File No. A-89-285

Dear Ms. Armento:

This is in response to your request for advice regarding application of the mass mailing prohibition of the Political Reform Act (the "Act")¹ to the publication of a public entity's agenda digest.

QUESTIONS

1. May the name of an elected public official and the name of her office appear in a city's agenda digest which is published in a newspaper of general circulation and paid for by the city?
2. What alterations on the format of the agenda digest are necessary to bring it into compliance with the mass mailing prohibitions?
3. If the newspaper ceases to charge the city for publication of the digest, may the digest include the name of an elected official and her title?
4. Do the same conclusions apply to publication of the agenda digest of a redevelopment agency?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. The name of an elected official and of her office may not appear in a publication of the agenda digest which is paid for by the city.

2. In order to bring publication of the agenda digest into compliance with the mass mailing prohibitions of the Act, the name of the elected official and of her office may not be included in the agenda digest.

3. If the city incurred no costs for the publication of the agenda digest, the publication would not fall under the restrictions of the Act and the name of the elected official and her title would not have to be deleted from the agenda digest.

4. The same conclusions apply to the agenda digest of a redevelopment agency.

FACTS

The City Clerk of the City of South San Francisco is an elected official and is responsible for the final compilation and distribution of the agenda and agenda materials for city council and redevelopment agency meetings. As a service to the public, but not pursuant to any legal requirement, digests of city council and redevelopment agency agendas are printed in the local newspaper on the day of each meeting. The city pays for publication of these digests in the newspaper. The newspaper is delivered free to homes and businesses within the corporate limits of the municipality and is sold through self-service racks.

You have provided us with sample digests of city council and redevelopment agency agendas. In both samples, the city clerk's name and title appear in bold face print.

ANALYSIS

Section 89001 prohibits mass mailings at public expense. A mass mailing consists of 200 or more substantially similar pieces of mail sent in any one calendar month. (Section 82041.5; Regulation 18901(d), copy enclosed.)

A mass mailing is "sent at public expense" within the meaning of Section 89001 if any of the costs of design, production, printing or distribution, is paid with public moneys. (Regulation 18901(a).) A mass mailing is "sent" within the meaning of Government Code Section 89001 if it consists of paid advertisement in any subscription publication such as a newspaper of general circulation. (Regulation 18901(g)(5).)

Publication of the city and redevelopment agency agenda digests in the local newspaper constitutes a mass mailing because the costs of design, production, printing and distribution is paid

for with public moneys and the publication is the equivalent of a paid advertisement. Thus, the prohibitions of Section 89001, as interpreted through Regulation 18901, apply to these publications.

A mass mailing is prohibited if:

(1) The name of the elected officer or his or her photograph appears on the document; and

(A) The elected officer exercises direction or control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from, the elected officer or his or her office; or

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or

(ii) The name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

(B) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface.

(C) An elected officer is "affiliated with an agency" if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency.

These prohibitions apply to your facts. Because the city clerk is an elected official and because she exercises control over the content and production of the agenda digests, her name and title may not appear in the published digests. Moreover, her

name and title should be deleted because they are "featured" in the digests by their bold typeface.

Based on the above discussion, the city clerk's name and her title may not be included in the digests as long as the city pays for publication of the digests in a newspaper of general circulation.

We now determine whether the same result would apply if the newspaper ceased to charge the public entities for publication of the agenda digests. We conclude that if the newspaper did not charge the public agencies for publication of the digests, inclusion of the city clerk's name and title would not violate the mass mailing prohibitions.

For purposes of Section 89001, a mass mailing is "sent" if it is distributed by one of the following means:

- (1) United States Postal Service;
- (2) Any commercial delivery service;
- (3) Agency personnel or agents of the agency;
- (4) Volunteer delivery mechanisms;
- (5) Paid advertisement in any subscription publication such as a newspaper of general circulation; or
- (6) Electronic mail communications.

(Regulation 18901(g).)

Pursuant to the above, a mass mailing is not "sent" when it is published free of charge in a newspaper of general circulation. Thus, the mass mailing prohibition does not apply to the digests if they are printed free of charge to the city and the name and title of the city clerk may be included in the digests.

I trust we have adequately answered your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By: Blanca M. Breeze
Counsel, Legal Division

KED/BMB:aa

Enclosure



California Fair Political Practices Commission

June 7, 1989

Valerie J. Armento
City Attorney
City Hall Annex
315 Maple Avenue
P. O. Box 711
South San Francisco, CA 94083

Re: Your Request for Advice
Our File No. A-89-285

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CONCLUSIONS

1. The name of an elected official and of her office may not appear in a publication of the agenda digest which is paid for by the city.

2. In order to bring publication of the agenda digest into compliance with the mass mailing prohibitions of the Act, the name of the elected official and of her office may not be included in the agenda digest.

3. If the city incurred no costs for the publication of the agenda digest, the publication would not fall under the restrictions of the Act and the name of the elected official and her title would not have to be deleted from the agenda digest.

4. The same conclusions apply to the agenda digest of a redevelopment agency.

FACTS

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A mass mailing is prohibited if:

(1) The name of the elected officer or his or her photograph appears on the document; and

(A) The elected officer exercises direction or control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from, the elected officer or his or her office; or

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or

(ii) The name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

(B) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface.

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name and title should be deleted because they are "featured" in the digests by their bold typeface.

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We now determine whether the same result would apply if the newspaper ceased to charge the public entities for publication of the agenda digests. We conclude that if the newspaper did not charge the public agencies for publication of the digests, inclusion of the city clerk's name and title would not violate the mass mailing prohibitions.

For purposes of Section 89001, a mass mailing is "sent" if it is distributed by one of the following means:

- (1) United States Postal Service;
- (2) Any commercial delivery service;
- (3) Agency personnel or agents of the agency;
- (4) Volunteer delivery mechanisms;
- (5) Paid advertisement in any subscription publication such as a newspaper of general circulation; or
- (6) Electronic mail communications.

(Regulation 18901(g).)

Pursuant to the above, a mass mailing is not "sent" when it is published free of charge in a newspaper of general circulation. Thus, the mass mailing prohibition does not apply to the digests if they are printed free of charge to the city and the name and title of the city clerk may be included in the digests.

I trust we have adequately answered your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED/BMB:aa

Enclosure



AM 11 3 15 PM '89

OFFICE OF THE
CITY ATTORNEY

May 10, 1989

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA. 95804

Dear Sir or Madam:

This letter is to request some clarification regarding the Proposition 73 mass mailing regulations.

The City Clerk of the City of South San Francisco is an elected official and is responsible for the final compilation and distribution of the agenda and agenda materials for City Council meetings. As a service to the public, but not pursuant to any legal requirement, a digest of the Council agenda is printed in the local newspaper on the day of the meeting. An example of the printed digest of the meeting is enclosed. The printing of this digest in the newspaper is paid for by the City. The newspaper is delivered free to homes and businesses within the corporate limits, and also sold through self-service racks.

As you can see on the example, the City Clerk's name and title appear in bold face print. Does this run afoul of the Proposition 73 regulations? If so, what would be acceptable so that the digest can continue to be printed? If the newspaper ceased to charge the City, could the digest be printed without alteration?

Also included is an example of the Redevelopment Agency agenda digest. It is in the same format as the one for the City Council. (The Council is the Agency). The City Clerk performs the same duties for the Agency that she does for the Council, although in the past a different individual performed the role of Agency Clerk. If your conclusion above is that Proposition 73 prohibits the inclusion of the Clerk's name in the published Council agenda digest, does that conclusion change or remain the same with regard to the Agency agenda digest?

Thank you for your time and attention to this matter.

Very truly yours,


VALERIE J. ARMENTO
City Attorney

VJA/mm
Enc.

SO. SAN FRANCISCO CITY COUNCIL AGENDA DIGEST

Date & Time: Wednesday, May 10, 1989, 7:30 p.m.
Location: Municipal Services Building, Community Room,
33 Arroyo Drive, South San Francisco, CA 94080
Agenda & Supporting Materials: Agendas and supporting material available
in the City Clerk's Office, W. Orange and
Grand Avenue Libraries
Inquiries: Call Barbara A. Battaya, City Clerk at 877-8518
WTVC: Channel 3 — Live

Note: Item 1 through 4 are Consent Calendar items and will be voted on without discussion unless a request to speak is received at the meeting.

Pledge of Allegiance: Police Explorers

Invocation: Police Chaplain Coppel

Presentation: Proclamation — National Police Week May 14-20, 1989

1. Approval of the Regular Bills of 5/10/89.
2. Resolution authorizing the City Manager to apply for State-Local Transportation Program which is authorized by SB140.
3. Resolution receiving the adopted Owner Participation and Preference Rules, proposed Redevelopment Plan and Agency's Report to Council for the Downtown/Central Redevelopment Project.
4. Resolution approving an Antidisplacement and Relocation Assistance Plan, in connection with the Community Development Block Grant Program.
5. Motion to approve criteria for installation of stop signs.
6. Modification for cause and clarification to Special Condition of No. 5(c) of UP-88-820 pertaining to a fencing requirement: James Elmore: Motion to adopt findings, and modify Special Condition No. 5(c) of UP-88-820 for the fencing requirement at 1051 Airport Blvd.
7. Motion to adopt the ordinance on selection and training of Dispatchers.
8. **Public Hearing** - Community Development Block Grant Program Funds: Conduct the Public Hearing; Resolution approving the Statement of Objectives.
9. **Public Hearing** - On appeal of the Planning Commission decision of 6/9/88 to deny the elimination of Special Condition No. 3 of UP-84-705/MOD 2 to 338 North Canal (Rich Diodati), which would allow an open storage yard at an existing office/warehouse building at 338 North Canal Street in the P-I Zone District - continued from the 4/12/89; Continue the Public Hearing, at the Applicant's request, to 5/24/89.
10. Closed Session for the purpose of discussion of personnel matters, labor relations, property negotiations and litigation.
11. Motion to adjourn the meeting to Wednesday, 5/17/89, at 7:00 p.m., in the City Council Conference Room, City Hall, for the purpose of a study session on the following: Capital Projects for the Wastewater Treatment Plant, Proposed sewer rates; Effluent Characterization Study.

SO. SAN FRANCISCO REDEVELOPMENT AGENCY

AGENDA DIGEST

Date & Time: Wednesday, May 10, 1989, 7:00 p.m.
Location: Municipal Services Building, Community Room,
33 Arroyo Drive, South San Francisco, CA 94080
Agenda & Supporting Materials: Agendas and supporting material available
in the City Clerk's Office, W. Orange and
Grand Avenue Libraries
Inquiries: Call Barbara A. Battaya, City Clerk at 877-8518

Note: Item 1 through 4 are Consent Calendar items and will be voted on without discussion unless a request to speak is received at the meeting.

1. Approval of the Minutes of the Regular Meeting of 4/26/89.
2. Approval of the Regular Bills of 5/10/89.
3. Resolution approving an amendment to the agreement with EIP Associates for additional tasks related to the EIR for the Downtown/Central Redevelopment Project.
4. Resolution approving the Agency's Report to the Council on the proposed Redevelopment Plan for the Downtown/Central Redevelopment Project and authorizing submittal to Council of the Report and Redevelopment Plan.
5. Resolution certifying the Final EIR for the Downtown/Central Redevelopment Project.
6. Closed Session for the purpose of the discussion of personnel matters, labor relations, property negotiations and litigation.
7. Adjournment.